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13 UNITED STATES DISTRICT COURT

14 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

15 YELLOWCAKE, INC., a California
16 corporation,

17 Plaintiff,

18 v.

19 HYPHY MUSIC, INC.,

20 Defendant.

21 HYPHY MUSIC, INC.,

22 Cross-Complainant,

23 v.

24 YELLOWCAKE, INC.; COLONIZE MEDIA,
25 INC.; JOSE DAVID HERNANDEZ; and
26 JESUS CHAVEZ SR.,

27 Cross-Defendants.

28 Case No. 1:20-CV-00988-JLT-BAM

**JESUS CHAVEZ, SR.'S STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

Date: September 29, 2023

Time: 9:00 a.m.

Crtrm.: 4

The Hon. District Judge Jennifer L. Thurston

27 Pursuant to Federal Rules of Civil Procedure 56 and Eastern District Local Rule, Rule 260,
28 Counter-Defendant JESUS CHAVEZ SR. ("Chavez") submits the following Statement of
Undisputed Material Facts in support of his Motion for Summary Judgment as to the eighth claim
for relief set forth in Counterclaimant HYPHY MUSIC, INC.'s ("Counterclaimant") First Amended
Counterclaim.

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I.

SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF CROSS-DEFENDANT

AS CROSSCLAIMANT CANNOT SHOW THAT CHAVEZ BREACHED THEIR

AGREEMENT

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<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence</u>	<u>Evidence</u>
<p>5 1. Counterclaimant alleges that it entered 6 into an oral exclusive recordings agreement 7 (the “Oral Agreement”) with Chavez in or about February 2013.</p> <p>8 <u>Supporting Evidence:</u></p> <p>9 Counterclaimant’s First Amended 10 Counterclaim (“FAC”) ¶ 16, 78 attached as Exhibit “B” to the Statement of Evidence 11 (“SOE”); Request for Judicial Notice 12 (“RJN”) at ¶ 1 attached as Exhibit “C” to the SOE.</p>	<p>1. </p>
<p>13 2. Counterclaimant alleges that the Oral 14 Agreement was for a period of five (5) 15 years pursuant to which Chavez was to 16 exclusively provide services as a recording artist in the making of sound and audio- visual recordings with respect to the Los 17 Originales Albums.</p> <p>18 <u>Supporting Evidence:</u></p> <p>19 FAC ¶ 16, 78 attached as Exhibit “B” to the SOE; RJN at ¶ 1 attached as Exhibit “C” to the SOE.</p>	<p>2. </p>
<p>20 3. Counterclaimant alleges that, in 21 consideration for the services provided and 22 payment thereto, Chavez agreed that 23 Counterclaimant would be the owner of all 24 title, right, and interest in and to the Los 25 Originales Albums (including without 26 limitation the copyrights and any 27 extensions and renewals thereto) from the 28 inception of the creation of each Los Originales Album.</p> <p>29 <u>Supporting Evidence:</u></p> <p>30 FAC ¶ 16, 78 attached as Exhibit “B” to the SOE; RJN at ¶ 1 attached as Exhibit “C” to the SOE.</p>	<p>3. </p>

<u>Moving Party's Undisputed Material Facts and Supporting Evidence</u>	<u>Opposing Party's Response and Evidence</u>
<p>4. Counterclaimant alleges that, in or about April 2019, Chavez breached the Oral Agreement by without limitation, purportedly transferring, licensing, selling, and/or authorizing Counter-defendants Yellowcake, Inc. and Colonize Media, Inc. to exploit the Los Originales Albums and Cover Art.</p>	4.
<p><u>Supporting Evidence:</u></p> <p>FAC ¶ 79 attached as Exhibit “B” to the SOE; RJN at ¶ 1 attached as Exhibit “C” to the SOE.</p>	
<p>5. Counterclaimant alleges that, at the time of the transfer to Yellowcake, Chavez possessed no transferable rights with respect to the Los Originales Albums.</p>	5.
<p><u>Supporting Evidence:</u></p> <p>FAC ¶ 23 attached as Exhibit “B” to the SOE; RJN at ¶ 1 attached as Exhibit “C” to the SOE.</p>	
<p>6. Counterclaimant admits that Chavez was not an employee of Counterclaimant.</p>	6.
<p><u>Supporting Evidence:</u></p> <p>Deposition Transcript of Jose Martinez (“Martinez Dep.”) at pp. 39:18-20 attached as Exhibit “E” to the SOE; Declaration of William H. Littlewood (“Littlewood Decl.”) at ¶ 3 attached as Exhibit “D” to the SOE. Counterclaimant’s Responses to Counter-Defendants’ First Set of Interrogatories, Response to Interrogatory (“SROG Response”) No. 11 attached as Exhibit “F” to the SOE; Littlewood Decl. at ¶ 4 attached as Exhibit “D” to the SOE. Counterclaimant’s Responses to Counter-Defendants’ First Set of Requests for Production of Documents (“RPD Response”) Nos. 23-24 attached as Exhibit “G” to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit “D” to the SOE.</p>	

<u>Moving Party's Undisputed Material Facts and Supporting Evidence</u>	<u>Opposing Party's Response and Evidence</u>
<p>7. Counterclaimant admits that none of the Los Originales band members were employees of Counterclaimant.</p> <p>Supporting Evidence:</p> <p>Martinez Dep. at pp. 39:21-23 attached as Exhibit "E" to the SOE; Littlewood Decl. at ¶ 3 attached as Exhibit "D" to the SOE.</p>	7.
<p>8. There is no written agreement between Counterclaimant and Chavez substantiating an alleged work for hire relationship between the parties.</p> <p>Supporting Evidence:</p> <p>RPD Response Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.</p>	8.
<p>9. There is no written agreement between Counterclaimant and Chavez whereby Chavez agreed that Counterclaimant would be the owner of all title, right, and interest in the Los Originales Albums.</p> <p>Supporting Evidence:</p> <p>Martinez Dep. at pp. 39:25-40:24; 125:19-126:11 attached as Exhibit "E" to the SOE; Littlewood Decl. at ¶ 3 attached as Exhibit "D" to the SOE. RPD Response Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.</p>	9.

Dated: July 14, 2023

WHITNEY, THOMPSON & JEFFCOACH LLP

By:



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